IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 546 OF 2007

Shivdhari Kalu Singh ....Petitioner.

V/s

Ruby Mills Ltd. ....Respondent.

Mr. N.M. Ganguli for the Petitoner.

Mr. M.M. Verma with Mr. Rajesh Gehani for the Respondent.

CORAM: V.M. KANADE, J.
DATE : 2nd April, 2007

P.C:-

1. Heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent.

2. The Petitioner is challenging the order passed in Appeal I.C. No.94 of 2004 passed by the President, Industrial Tribunal. The President, Industrial Tribunal, by the said order, confirmed the order passed by the Labour Court in Application BIR (REIN) No.81 of 1999.

3. It is the case of the Petitioner that he joined the services of the Respondent as a watchman in the Watch and Ward Department with effect from 12/12/1999 and he

worked for more than 20 days in the month commencing from December, 1998, 29 days in January 1999, 28 days in the month of February, 1999 and in the Month of March and April, 1999, the Petitioner worked for a period of 31 and 30 days respectively. It is the case of the Petitioner that he was working in a regular vacancy and he was not a substitute in place of another employee. From 01/05/1999, the Petitioner was given break for 2-3 days and on 03/05/1999, he was informed that his services were no longer required. It is the case of the Petitioner that there are 28 posts of watchmen in the Mill of the Respondent and that the Watch and Ward Department is covered by the standing orders applicable to the operatives in the cotton textile industry and that though the Petitioner was described as a substitute watchman, he had worked continuously for a period of 140 days in a vacant post and not as a substitute or badli in place of other permanent watchman. It is the case of the Petitioner, therefore, that in terms of the standing orders the Petitioner was entitled to be deemed to be on probation for three months and, thereafter, he was entitled to be deemed to be permanent in service of the Respondent.

4. The Petitioner filed an application under sections 78, 79 read with section 42(4) of the Bombay Industrial Relations Act, 1946 before the Labour Court seeking a direction that the Petitioner be reinstated with full back wages and with continuity in service. The Labour Court, however, by order dated 26/02/2004 dismissed the application of the Petitioner by passing a reasoned order. Against this order, the Petitioner preferred an appeal before the President, Industrial Tribunal. The appeal was also dismissed.

5. The learned Counsel appearing on behalf of the Petitioner submitted that both the lower Courts had clearly erred in holding that the Petitioner was a badli worker. He submitted that the Petitioner having worked for more than 140 days in the vacant post was entitled to be made permanent in view of the standing orders which stated that the person who has worked as an operative on permanent post was entitled to be made permanent. He drew my attention to the order passed by the Labour Court and President, Industrial Court.

6. In my view, the submissions made by the learned Counsel appearing for the Petitioner cannot be accepted. Both, the Labour Court as well as President, Industrial Court have considered all aspects of the case. The Petitioner, in the present case, in para 4 of his application, has clearly stated that he was appointed as a substitute watchman. Merely because the persons appointed as badli or substitute workers worked continuously for more than 140 days, they cannot claim permanency, as they do not have any legal right and are appointed as substitute workers when permanent workers are not available. No evidence has been produced by the Petitioner in support of his claim that, in fact, he was appointed on the permanent post and not as a badli worker. The Company had produced documentary evidence to show that the Petitioner had made an endorsement on the letter which stated that the petitioner - applicant was to be kept for a period of 2-3 months on trial basis and that he was issued a substitute card on which it was mentioned that he was appointed on trial basis for 2-3 months. Further, in his cross-examination, he has admitted

that he was not given any letter of appointment appointing him as a permanent workman. Both, the lower Court and the President, Industrial Court have taken into consideration this evidence.

7. In my view, there is no reason to interfere with the order passed by the Labour Court which is confirmed by the President, Industrial Court. Writ Petition is, therefore, dismissed in limine.

(V. M. KANADE, J.)